

No. 10644

United States
Circuit Court of Appeals
For the Ninth Circuit.

LORIN A. CRANSON,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division

FILED
JAN 31 1934

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

MESSRS. HOHFELD, FOERSTER, SHUMAN
& CLARK

LEON de FREMERY, ESQ.,

Eleventh Floor, Crocker Building
San Francisco, California

Attorneys for Plaintiff and Appellant

HON. FRANK J. HENNESSY,

United States Attorney

ESTHER B. PHILLIPS

Assistant United States Attorney,
Post Office Building
7th and Mission Streets
San Francisco, California

Attorneys for Defendant and Appellee

In the United States District Court for the Northern
District of California, Southern Division

No. 22168-S

LORIN A. CRANSON,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

COMPLAINT TO RECOVER TAXES
ILLEGALLY COLLECTED

Comes now plaintiff above named, and for cause
of action against the defendant herein alleges as
follows:

I.

Plaintiff is a citizen of the United States and a
[1*] resident of the City and County of San Fran-
cisco, State of California.

II.

On or about March 15, 1937, plaintiff filed with
John V. Lewis, as Collector of Internal Revenue of
the United States for the First District of Cali-
fornia, his income tax return for the calendar year
1936, upon Form 1040 furnished by the Commis-
sioner of Internal Revenue of the United States for
that purpose. Said return showed an income tax
due for said calendar year 1936 from plaintiff in

*Page numbering appearing at foot of page of original certified
Transcript of Record.

the amount of One Thousand Seventeen and 38/100 Dollars (\$1017.38), which amount plaintiff paid to said John V. Lewis, as Collector of Internal Revenue of the United States for the First District of California, in installments as follows: On or about March 15, 1937, the sum of Two Hundred Fifty-four and 35/100 Dollars (\$254.35); on or about June 15, 1937, the sum of Two Hundred Fifty-four and 35/100 Dollars (\$254.35); on or about September 15, 1937, the sum of Two Hundred Fifty-four and 34/100 Dollars (\$254.34); and on or about December 15, 1937, the sum of Two Hundred Fifty-four and 34/100 Dollars (\$254.34).

III.

On or about March 21, 1938, the Commissioner of Internal Revenue of the United States asserted that additional income taxes in the amount of One Hundred Forty-nine and 48/100 Dollars (\$149.48) were owing by said plaintiff for said calendar year 1936. Said sum of One Hundred Forty-nine and 48/100 Dollars (\$149.48) was paid by plaintiff on or about March 21, 1938, and interest thereon in the amount of Nine and 21/100 Dollars (\$9.21) was paid on April 15, 1938. Both of said payments were made to Clifford C. Anglim, as Collector of Internal Revenue of the [2] United States for the First District of California.

IV.

Said John V. Lewis was the duly appointed, qualified and acting Collector of Internal Revenue of the United States for the First District of Cali-

ifornia during all the times herein mentioned prior to March 7, 1938, but ever since said date has not been and is not now in office as Collector of Internal Revenue of the United States.

V.

On January 1, 1936, plaintiff was the owner of four hundred (400) shares of the capital stock of Honolulu Oil Corporation, a corporation organized under the laws of the State of Delaware, which shares had been purchased by plaintiff subsequent to March 1, 1913, for the amount of Six Thousand Six Hundred Thirty-three and 25/100 Dollars (\$6633.25). On or about July 24, 1936, plaintiff purchased an additional one hundred (100) shares of said capital stock of said corporation for the amount of Two Thousand Eight Hundred Fifty-seven and 50/100 Dollars (\$2857.50). During the calendar year 1936 plaintiff received from said corporation cash distributions on said shares of stock in the sum of Four Hundred Fifty Dollars (\$450.00). Plaintiff reported on his said income tax return for the calendar year 1936, on line 6 of said return, as taxable dividends received during the calendar year 1936, the total sum of One Thousand Seven Hundred Dollars (\$1700.00), which said total sum included the aforementioned sum of Four Hundred Fifty Dollars (\$450.00) received from said Honolulu Oil Corporation.

VI.

On or about June 12, 1939, plaintiff filed with the [3] Collector of Internal Revenue of the United States for the First District of California at San Francisco, California, a claim for refund of income taxes illegally collected from plaintiff for the calendar year 1936 in the sum of One Hundred Twenty-four and 84/100 Dollars (\$124.84). Said claim for refund was based on the ground that plaintiff had sustained a deductible loss in the amount of One Thousand Dollars (\$1000.00) during the calendar year 1936. A copy of said claim for refund of taxes illegally collected is attached hereto, marked Exhibit "A", and is hereby referred to and by such reference is made a part of this complaint as fully and to the same extent as if it were set out at large in this paragraph. Said claim, together with interest thereon in the amount of Twenty and 20/100 Dollars (\$20.20), was allowed by said Commissioner of Internal Revenue by a Certificate of Overassessment issued in the month of March, 1940, and a portion thereof, to wit, the sum of One Hundred Thirty-two and 53/100 Dollars (\$132.53), was repaid to plaintiff through a credit thereof to a deficiency in Federal income taxes owing by plaintiff for the calendar year 1937, and the balance thereof, to wit, the sum of Twelve and 51/100 Dollars (\$12.51), was refunded to plaintiff on May 24, 1940.

VII.

On or about March 6, 1940, plaintiff filed with the Collector of Internal Revenue of the United States

for the First District of California at San Francisco, California, an amended claim for refund of income taxes illegally collected from plaintiff for the calendar year 1936 in the sum of One Hundred Seventy-six and 68/100 Dollars (\$176.68), of which amount the sum of One Hundred Twenty-four and 84/100 Dollars (\$124.84) represents that portion of said amended claim for [4] refund which was based on the grounds set forth in said original claim for refund filed on or about June 12, 1939, and which has been refunded to plaintiff as hereinabove in paragraph VI set forth. The balance of said amended claim for refund, to wit, the sum of Fifty-one and 84/100 Dollars (\$51.84), was based on the ground that a portion, to wit, the sum of Four Hundred Thirty-two Dollars (\$432.00), of the total cash distributions received by plaintiff during the calendar year 1936 from said Honolulu Oil Corporation was not paid out of the earnings or profits of said corporation accumulated after February 28, 1913, nor out of its earnings or profits for the taxable year 1936, in that said dividends were paid out of increase in value of property accrued before March 1, 1913, and that said portion was not subject to income tax in the hands of and was not taxable to plaintiff. A copy of said amended claim for refund of taxes illegally collected is hereto attached, marked Exhibit "B", and is hereby referred to and by such reference is made a part of this complaint as fully and to the same extent as if it were set out at large in this paragraph.

VIII.

Thereafter and on or about May 17, 1941, plaintiff filed with the Collector of Internal Revenue of the United States for the First District of California at San Francisco, California, a second amended claim for refund of income taxes illegally collected from plaintiff for the calendar year 1936 in the sum of One Hundred Seventy-six and 68/100 Dollars (\$176.68), of which amount the sum of One Hundred Twenty-four and 84/100 Dollars (\$124.84) represents that portion of said second amended claim for refund which was based on the grounds set forth in said original claim for refund filed on or about [5] June 12, 1939, and which has been refunded to plaintiff as hereinabove in paragraph VI set forth. The balance of said second amended claim for refund, to wit, the sum of Fifty-one and 84/100 Dollars (\$51.84), was based on the ground that a portion, to wit, the sum of Four Hundred Thirty-two Dollars (\$432.00), of the total cash distributions received by said plaintiff during the calendar year 1936 from said Honolulu Oil Corporation was not paid out of the earnings or profits of said corporation accumulated after February 28, 1913, nor out of its earnings or profits for the taxable year 1936, in that said dividends were paid out of increase in value of property accrued before March 1, 1913, and that said portion was not subject to income tax in the hands of and was not taxable to plaintiff. A copy of said second amended claim for refund of taxes illegally collected is hereto attached, marked Exhibit "C", and is hereby referred to and by such

reference is made a part of this complaint as fully and to the same extent as if it were set out at large in this paragraph.

IX.

On or about July 22, 1941, said amended claim for refund filed on or about March 6, 1940, was rejected and disallowed in full by said Commissioner of Internal Revenue, and no part of the amount claimed therein, other than the sum of One Hundred Twenty-four and 84/100 Dollars (\$124.84), as hereinabove in paragraph VI set forth, has been credited, repaid or refunded. Notice of such rejection and disallowance was mailed to plaintiff by registered mail by said Commissioner on July 22, 1941.

X.

The action taken by said Commissioner of Internal [6] Revenue with respect to said second amended claim for refund filed on or about May 17, 1941, was and is as set forth in a letter dated February 10, 1942, addressed to plaintiff herein, and received by plaintiff on or about February 16, 1942. Said letter is in words and figures as follows:

“Treasury Department
Washington

Office of

Commissioner of Internal Revenue

Address Reply To

Feb 10 1942

Commissioner of Internal Revenue

And Refer To

IT:C1:CC:3-EVL

Mr. L. A. Cranson,

215 Market Street,

San Francisco, California.

Sir:

Reference is made to Form 843 filed by you on May 17, 1941, with the Collector of Internal Revenue, San Francisco, California, requesting a refund of \$176.68, income tax, for the year 1936. The Form 843 is considered an application for reconsideration of your claim for refund, which was disallowed, registered notice of disallowance having been mailed on July 22, 1941, in accordance with the provisions of the Internal Revenue laws.

The Bureau has considered the additional arguments presented in your Form 843, and in accordance with the findings of the Internal Revenue Agent in Charge, San Francisco, California, the disallowance of the above-mentioned claim is sustained.

In view of the foregoing, your application for reconsideration is denied.

Respectfully,

TIMOTHY C. MOONEY,

Deputy Commissioner,

By T. C. ATKESON,

Head of Division." [7]

XI.

Plaintiff alleges that only a portion of said cash distributions in the sum of Four Hundred Fifty Dollars (\$450.00) received by plaintiff during the calendar year 1936 from said Honolulu Oil Corporation, to wit, the sum of not more than Eighteen Dollars (\$18.00), was paid out of the earnings or profits of said corporation accumulated after February 28, 1913, or out of its earnings or profits for the taxable year 1936, and that the balance of said sum of Four Hundred Fifty Dollars (\$450.00), to wit, an amount not less than the sum of Four Hundred Thirty-two Dollars (\$432.00), was not paid out of the earnings or profits of said corporation accumulated after February 28, 1913, nor out of its earnings or profits for the taxable year 1936, and that said balance was not subject to income tax in the hands of and was not taxable to plaintiff. Plaintiff further alleges that he erroneously reported on his said income tax return for the calendar year 1936, as taxable dividends received from said Honolulu Oil Corporation, the total sum of Four Hundred Fifty Dollars (\$450.00), whereas in truth and in fact a portion of said total sum, to wit,

not less than Four Hundred Thirty-two Dollars (\$432.00), did not, nor did any part thereof, constitute a distribution out of the earnings or profits of said corporation accumulated after February 28, 1913, or out of its earnings or profits for the taxable year 1936, nor was said portion, nor any part thereof, subject to income tax, and plaintiff overpaid his income taxes for said calendar year in the sum of not less than Fifty-one and 84/100 Dollars (\$51.84).

Wherefore, plaintiff prays judgment against the defendant herein for the sum of Fifty-one and 84/100 Dollars [8] (\$51.84), together with interest thereon as by law provided, and for his cost in this behalf sustained.

MORRISON, HOHFELD,
FOERSTER, SHUMAN &
CLARK,
LEON de FREMERY,
Attorneys for Plaintiff. [9]

United States of America,
Northern District of California,
City and County of San Francisco.—ss.

Lorin A. Cranson, being first duly sworn, deposes and says:

He is the plaintiff named herein; he has read the foregoing Complaint to Recover Taxes Illegally Collected and knows the contents thereof; the same is true of his own knowledge, except as to the matters

which are therein stated on information or belief, and as to those matters he believes it to be true.

LORIN A. CRANSON,

L. A. CRANSON.

(Lorin A. Cranson)

Subscribed and sworn to before me this 10th day of April, 1942.

[Notarial Seal] HELEN G. BOYLE,
Notary Public in and for the City and County of
San Francisco, State of California.

My Commission Expires Sept. 19, 1942. [10]

EXHIBIT "A"

Form 843

Treasury Department
Internal Revenue Service
(Revised April 1940)

CLAIM

To Be Filed With the Collector Where Assessment
Was Made or Tax Paid

Collector's Stamp

(Date received)

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

Refund of Tax Illegally Collected.

Refund of Amount Paid for Stamps Unused
or Used in Error or Excess.

Abatement of Tax Assessed (not applicable
to estate or income taxes).

State of California

City and County of San Francisco—ss:

Type or Print

Name of taxpayer or

purchaser of stamps L. A. Cranson

Business address 215 Market Street,

San Francisco, California

Residence

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed California

2. Period (if for income tax, make separate form for each taxable year) from January 1, 1936, to December 31, 1936

3. Character of assessment or tax Income

4. Amount of assessment, \$1,166.86; dates of payment Statutory Dates

5. Date stamps were purchased from the Government

6. Amount to be refunded..... \$124.84

7. Amount to be abated (not applicable to income or estate taxes) \$

8. The time within which this claim may be legally filed expires, under Section 322 of the Revenue Act of 1936, on March 15, 1940

The deponent verily believes that this claim should be allowed for the following reasons:

Your deponent hereby claims a loss sustained in

1936, not claimed on his original return, occasioned by investment in capital stock of Santa Clara Holding Company becoming worthless in 1936. The refund due is computed on Exhibit "A" attached hereto and made a part hereof.

My protest dated May 26, 1939, and filed with the Internal Revenue Agent in Charge at San Francisco, is made a part of this claim to the same extent as though the same had been fully incorporated herein.

(Attach letter-size sheets if space is not sufficient)

Signed L. A. CRANSON

Sworn to and subscribed before me this 2nd day of June 1939

[Seal] HELEN G. BOYLE

Notary Public in and for the City and County of San Francisco, State of California.

(See Instructions on Reverse Side)

[Printer's Note: Ruled forms on Reverse of sheet contain no entries.] [11]

L. A. CRANSON

CLAIM FOR REFUND OF OVERPAYMENT OF
INCOME TAXStatement attached to and made a part of Claim for Refund
for Calendar Year 1936

Net Income per R. A. R. 3/24/38	\$15,883.50
Less: Worthless stock of Santa Clara Holding Com- pany	1,000.00
Revised Net Income	\$14,883.50
Personal Exemption and Dependents	1,400.00
Surtax Net Income	\$13,483.50
Earned Income Credit	1,400.00
Normal Tax Net Income	\$12,083.50
Normal Tax	\$ 483.34
Surtax	\$ 558.68
Total Tax Assessable	\$ 1,042.02
Tax Previously Assessed	\$ 1,166.86
Refund being demanded	\$ 124.84

[12]

EXHIBIT "B"

Form 843

Treasury Department
Internal Revenue Service
(Revised April 1940)

AMENDED CLAIM

To Be Filed With the Collector Where Assessment
Was Made or Tax Paid

Collector's Stamp
(Date received)

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

Refund of Tax Illegally Collected.

Refund of Amount Paid for Stamps Un-used, or Used in Error or Excess.

Abatement of Tax Assessed (not applicable to estate or income taxes).

State of California

City and County of San Francisco—ss:

Type or Print

Name of taxpayer or

purchaser of stamps L. A. Cranson

Business address 215 Market Street,

San Francisco, California

Residence

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed
1st California

2. Period (if for income tax, make separate form
for each taxable year) from January 1, 1936, to
December 31, 1936

3. Character of assessment or tax Income

4. Amount of assessment, \$1,166.86; dates of
payment Statutory dates

5. Date stamps were purchased from the Gov-
ernment

6. Amount to be refunded \$176.68

7. Amount to be abated (not applicable
to income or estate taxes) \$

8. The time within which this claim may be
legally filed expires, under Section 322 of the Reve-
nue Act of 1936, on March 15, 1940

The deponent verily believes that this claim
should be allowed for the following reasons:

See statement attached hereto and made a part
hereof.

(Attach letter-size sheets if space is not sufficient)

Signed L. A. CRANSON

Sworn to and subscribed before me this 6th day
of March 1940

[Seal] HELEN G. BOYLE,

Notary Public in and for the City and County of
San Francisco, State of California

[Printer's Note: Ruled forms on Reverse of
sheet contain no entries.] [13]

L. A. CRANSON

Statement Attached to and Made a Part of Amended
Claim for Refund for the Calendar Year 1936

The deponent verily believes that this claim should be allowed for the following reasons:

Failure to deduct on returns filed, loss sustained in 1936 by reason of investment in capital stock of Santa Clara Holding Company becoming worthless in 1936. The original claim for refund and all the papers and documents attached thereto and referred to therein, are hereby made a part of this claim to the same extent as though attached hereto in full.

On my income tax return for the calendar year 1936, I reported as subject to tax, dividends from Honolulu Oil Corporation in the amount of \$450.00. 96% of these dividends were paid out of increase in value of property accrued before March 1, 1913 and therefore \$432.00 is exempt from tax. In computing the Corporation's earnings available for taxable dividends, it is necessary to take into account the following principal deductions:

1. Excess of depletion on March 1, 1913 value of the company's oil and gas properties over depletion sustained on cost of such properties.

2. All other items of unallowable deductions normally taken into account in the computation of earnings or profits available for taxable dividends, including losses upon dissolution during 1936 of wholly owned subsidiaries.

The refund due is computed as follows:

Net Income per R.A.R. 3/24/38	\$15,883.50
Less: Dividends from Honolulu Oil Corporation paid out of increase in value of property accrued before 3/1/13	432.00
Worthless stock of Santa Clara Holding Co.....	1,000.00
	<hr/>
Revised Net Income	\$14,451.50
Personal Exemption and Dependents	1,400.00
	<hr/>
Surtax Net Income	\$13,051.50
Earned Income Credit	1,400.00
	<hr/>
Normal Tax Net Income	\$11,651.50
Normal Tax	\$ 466.06
Surtax	524.12
	<hr/>
Total Tax Assessable	\$ 990.18
Tax Previously Assessed	1,166.86
	<hr/>
Refund being demanded	\$ 176.68
	[14]

EXHIBIT "C"

Form 843

Treasury Department
Internal Revenue Service
(Revised April 1940)

SECOND AMENDED CLAIM

To Be Filed With the Collector Where Assessment
Was Made or Tax Paid

Collector's Stamp
(Date received)

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

- Refund of Tax Illegally Collected.
 Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.
 Abatement of Tax Assessed (not applicable to estate or income taxes).

State of California

City and County of San Francisco—ss:

Type or Print

Name of taxpayer or

purchaser of stamps Lorin A. Cranson

Business address 215 Market Street,

San Francisco, California

Residence

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed
1st California

2. Period (if for income tax, make separate form
for each taxable year) from January 1, 1936, to
December 31, 1936

3. Character of assessment or tax Income

4. Amount of assessment, \$1,166.86; dates of
payment statutory dates

5. Date stamps were purchased from the Gov-
ernment

6. Amount to be refunded \$176.68

7. Amount to be abated (not applicable
to income or estate taxes) \$

8. The time within which this claim may be
legally filed expires, under Section 322 of the Reve-
nue Act of 1936, on March 15, 1940

The deponent verily believes that this claim
should be allowed for the following reasons:

See statement attached hereto and made a part
hereof.

(Attach letter-size sheets if space is not sufficient)

Signed LORIN A. CRANSON

Sworn to and subscribed before me this 14th day
of May 1941

[Seal] HELEN G. BOYLE,

Notary Public in and for the City and County of
San Francisco, State of California

[Printer's Note: Ruled forms on Reverse of
sheet contain no entries.] [15]

LORIN A. CRANSON

Statement Attached to and Made a Part of Second
Amended Claim for Refund for the Calendar
Year 1936

The deponent verily believes that this claim should be allowed for the following reasons:

Failure to deduct on returns filed, loss sustained in 1936 by reason of investment in capital stock of Santa Clara Holding Company becoming worthless in 1936. The original claim for refund and all the papers and documents attached thereto and referred to therein, are hereby made a part of this claim to the same extent as though attached hereto in full.

On my income tax return for the calendar year 1936, I reported as subject to tax, dividends from Honolulu Oil Corporation in the amount of \$450.00. 96% of these dividends were paid out of increase in value of property accrued before March 1, 1913 and therefore \$432.00 is exempt from tax. In computing the Corporation's earnings available for taxable dividends, it is necessary to take into account the following principal deductions:

1. Excess of depletion on March 1, 1913 value of the company's oil and gas properties over depletion sustained on cost of such properties.

2. All other items of unallowable deductions normally taken into account in the computation of earnings or profits available for taxable dividends, including losses upon dissolution during 1936 of wholly owned subsidiaries.

3. In the event it should be held that losses upon dissolution during 1936 of wholly owned subsidiaries do not reduce earnings or profits of Honolulu Oil Corporation available for dividends, it is then contended in the alternative that the operating deficits of the subsidiary corporations existing as of the date of their dissolution were absorbed by Honolulu Oil Corporation and had the effect of reducing the earnings or profits of Honolulu Oil Corporation available for dividends.

The refund due is computed as follows:

Net Income per R.A.R. 3/24/38	\$15,883.50
Less: Dividends from Honolulu Oil Corporation paid out of increase in value of property accrued before 3/1/13	432.00
Worthless stock of Santa Clara Holding Co.....	1,000.00
<hr/>	
Revised Net Income	\$14,451.50
Personal Exemption and Dependents	1,400.00
<hr/>	
Surtax Net Income	\$13,051.50
Earned Income Credit	1,400.00
<hr/>	
Normal Tax Net Income	\$11,651.50
Normal Tax	466.06
Surtax	524.12
<hr/>	
Total Tax Assessable	\$ 990.18
Tax Previously Assessed	1,166.86
<hr/>	
Refund being demanded	\$ 176.68

[Endorsed]: Filed April 22, 1942. [16]

[Title of District Court and Cause.]

ANSWER

Comes now the above-named defendant through his duly appointed attorney, Frank J. Hennessy, Esquire, United States Attorney for the Northern District of California, and answers the complaint filed herein as follows:

I.

Admits the allegations of fact contained in paragraph I of plaintiff's complaint.

II.

Admits the allegations of fact contained in paragraph II of plaintiff's complaint except it is denied that the income tax return was filed on March 15, 1937 but admits that said return was filed on March 13, 1937; denies the payment of \$254.35 alleged to be made on March 15, 1937 but admits payment of \$254.35 on March 13, 1937; denies the payment of the sum of \$254.35 on June 15, 1937 but admits the payment of \$254.35 on June 14, 1937; denies payment of \$254.34 on September 15, 1937 but admits the payment of \$254.34 on September 8, 1937.

III.

Admits the allegations of fact contained in paragraph III of plaintiff's complaint except it is denied that the sum of \$149.48 was paid on March 21, 1938 but admits that the sum of \$149.48 was paid March 25, 1938; [18] denies payment of interest in the sum of \$9.21 on April 15, 1938 but admits payment of interest in the amount of \$9.21 on April 18, 1938.

IV.

Admits the allegations of fact contained in paragraph IV of plaintiff's complaint.

V.

For lack of knowledge and information sufficient to form a belief defendant denies the allegations of fact set forth in paragraph V of plaintiff's complaint except it is admitted that plaintiff reported on his income tax return for the calendar year 1936 on line 6 of said return as taxable dividends received during the calendar 1936 the total sum of \$1,700.00.

VI.

Admits the allegations of fact contained in paragraph VI of plaintiff's complaint except it is denied that the claim for refund was filed on June 12, 1938 but admits that it was filed on June 13, 1939.

VII.

Denies the allegations of fact contained in paragraph VII of plaintiff's complaint except it is admitted that claim for refund in the sum of \$176.68 was filed on March 7, 1940, of which amount the sum of \$124.84 represents that portion of said amended claim for refund which was based on the grounds set forth in said original claim for refund filed on June 13, 1939, and which has been refunded to the plaintiff. Defendant admits that plaintiff's claim for refund attached to its complaint as Exhibit "B" is a true and correct copy of the claim for refund filed with the Collector of Internal Reve-

nue and that such claim speaks for itself as such, and further admits no part of the facts set forth in said claim for refund. [19]

VIII.

Admits that the second amended claim for refund was filed on May 17, 1941 in the sum of \$176.68, of which amount the sum of \$124.84 represents that portion of said second amended claim for refund which was based on the grounds set forth in said original claim for refund filed on June 13, 1939, and which has been refunded to plaintiff. Otherwise, denies the allegations of fact contained in paragraph VIII of plaintiff's complaint except defendant admits that plaintiff's claim for refund attached to its complaint as Exhibit "C" is a true and correct copy of the claim for refund filed with the Collector of Internal Revenue and that such claim speaks for itself as such, and further admits no part of the facts set forth in said claim for refund.

IX.

Admits the allegations of fact contained in paragraph IX of plaintiff's complaint.

X.

Admits the allegations of fact contained in paragraph X of plaintiff's complaint.

XI.

Denies the allegations or purported allegations of fact contained in paragraph XI of plaintiff's complaint.

Wherefore, having fully answered the complaint filed herein, defendant respectfully prays that plaintiff's complaint be dismissed and judgment be entered in his favor for costs and such other appropriate relief as he may be entitled to under the law.

FRANK J. HENNESSY,
United States Attorney,
Attorney for Defendant.

By W. E. LECKING,
Asst. U. S. Atty.

(Receipt of Service.)

[Endorsed]: Filed July 11, 1942. [20]

[Title of District Court and Cause.]

STIPULATION

It Is Hereby Stipulated and Agreed by and between the parties hereto, by their respective attorneys, that the following facts shall be taken as true upon the trial of the above-entitled case, provided, however, that this stipulation shall be without [21] prejudice to the right of either party to introduce other and further evidence not inconsistent with the facts herein stipulated to be taken as true.

1. At all times herein mentioned plaintiff was a resident of San Francisco, California, and of the judicial district described as the Northern District of California, Southern Division. Plaintiff is the sole and absolute owner of the claim sued on herein, and is the sole person interested therein, and no

assignment or transfer of said claim, or of any part thereof or interest therein, has been made by plaintiff. No action other than that set forth in the complaint has been taken in Congress or by any of the Departments. Plaintiff has at all times borne true allegiance to the Government of the United States, and has not in any way aided, abetted or given encouragement to rebellion against said Government.

2. On March 13, 1937, plaintiff filed with the Collector of Internal Revenue of the United States for the First District of California an individual income tax return for the calendar year 1936, disclosing a net income of \$14,683.50 and a total tax due of \$1,017.38, which amount was duly assessed and was paid in quarterly installments during the year 1937 to John V. Lewis, as said Collector of Internal Revenue. Said John V. Lewis ever since March 7, 1938, has not been and is not now in office as Collector of Internal Revenue of the United States. A copy of said return is hereunto attached, marked Exhibit "A", and made a part hereof.

3. On January 1, 1936, plaintiff was the owner of 400 shares of the capital stock of Honolulu Oil Corporation, Ltd., and on July 24, 1936, plaintiff purchased an additional 100 shares of the capital stock of said corporation. The basis on January 1, [22] 1936, for income tax purposes of each of said shares of stock was greater than the aggregate cash distributions paid by said corporation during said year on each of said shares. During the calendar year 1936 plaintiff received from said corporation cash

distributions on said shares of stock in the sum of \$450, which plaintiff reported as taxable dividends received on his said income tax return for the calendar year 1936.

4. On March 24, 1938, the Internal Revenue Agent in Charge at San Francisco addressed a letter to the plaintiff enclosing a copy of report covering his examination of plaintiff's books and records, and disclosing a deficiency in tax of \$149.48 for 1936. Said deficiency, plus interest of \$9.21, was duly assessed and was paid in two installments on March 25 and April 18, 1938. A copy of said letter is hereunto attached, marked Exhibit "B", and made a part hereof.

5. By a Certificate of Overassessment, No. 2534937, issued in or about March, 1940, plaintiff was advised of an overassessment of tax for the year 1936 in the amount of \$124.84, plus interest thereon in the amount of \$7.69, which resulted from the allowance of plaintiff's original claim for refund (Exhibit "A" of plaintiff's complaint). This amount was allowed on Schedule No. 70750, and was thereafter duly paid to plaintiff. A copy of said certificate is hereunto attached, marked Exhibit "C", and made a part hereof.

6. On March 7, 1940, plaintiff filed with the Collector of Internal Revenue of the United States for the First District of California an amended claim for refund of income taxes paid for the calendar year 1936. Disregarding items not now material, a portion of said claim, amounting to \$51.84, was based on the ground that only \$18 out of the \$450

received as distributions by plaintiff during the [23] calendar year 1936 from Honolulu Oil Corporation, Ltd., were taxable dividends, and that the balance of said distributions, namely, the sum of \$432, was not paid out of the earnings or profits of said corporation accumulated after February 28, 1913, nor out of its earnings or profits for the taxable year 1936, and was not taxable to plaintiff. A copy of said amended claim for refund is hereunto attached, marked Exhibit "D", and made a part hereof.

7. On May 14, 1941, the Internal Revenue Agent in Charge at San Francisco, California, addressed a letter to plaintiff regarding the aforesaid amended claim filed March 7, 1940, and by letter dated July 22, 1941, the Commissioner of Internal Revenue advised plaintiff that that claim was rejected. Copies of said letters dated May 14 and July 22, 1941, are hereto attached, marked Exhibit "E", and made a part hereof.

8. On May 17, 1941, plaintiff filed with the aforesaid Collector of Internal Revenue a second amended claim for refund of income taxes paid for the calendar year 1936. Disregarding items not now material, a portion of said claim, amounting to \$51.84, was likewise based on the ground that only \$18 out of the \$450 received as distributions by plaintiff during the calendar year 1936 from Honolulu Oil Corporation, Ltd., were taxable dividends, and that the balance of said distributions, namely, the sum of \$432, was not paid out of the earnings or profits of said corporation accumulated after Feb-

ruary 28, 1913, nor out of its earnings or profits for the taxable year 1936, and was not taxable to plaintiff. A copy of said second amended claim for refund is hereunto attached, marked Exhibit "F", and made a part hereof.

9. On February 10, 1942, the Commissioner of Internal Revenue addressed a letter to plaintiff regarding the aforesaid second amended claim filed May 17, 1941. A copy of said letter is hereunto attached, marked Exhibit "G", and made a part hereof. [24]

10. Honolulu Consolidated Oil Company was incorporated in 1910 under the laws of the State of California, and in 1930 said corporation was re-incorporated under the laws of the State of Delaware as Honolulu Oil Corporation, Ltd., at which time the shareholders of Honolulu Consolidated Oil Company exchanged their stock for stock of Honolulu Oil Corporation, Ltd., on a share for share basis. On May 26, 1937, the name of the corporation was changed to Honolulu Oil Corporation. Both of said corporations are hereinafter referred to as "Honolulu".

11. California Exploration Company was incorporated on June 27, 1927, under the laws of the State of Nevada. The primary business of said corporation was the acquisition and development of prospective oil properties in the State of Wyoming. Honolulu Oil Company was incorporated on November 2, 1929, under the laws of the State of Nevada. The primary business of said corporation was the acquisition and development of prospective

oil properties in the State of Texas. On August 4, 1934, said corporations were consolidated under the name of California Exploration Company, which name was thereupon changed to California Exploration Company, Inc. The assets of each of said constituent corporations were carried on the books of said corporations at cost, and the reserves for depreciation and depletion of each of said corporations, as shown by the books of each of said corporations, were computed on said cost. The assets, liabilities and reserves of each of said constituent corporations, as shown by its books, were carried forward in the same amounts on the books of the consolidated company, California Exploration Company, Inc.

12. Sea Cliff Development Company, Ltd., was incorporated on February 17, 1930, under the laws of the State of Nevada. [25] The primary business of said corporation was the acquisition and development of prospective oil properties in the Rincon Oil Field, Ventura County, California.

13. Petroleum Hydrogenation Company, Ltd., was incorporated on August 9, 1930, under the laws of the State of Nevada, and on November 25, 1930, its name was changed to Processco, Limited. Said corporation was formed primarily to acquire and develop patents relating to the processing of crude petroleum.

14. The aforesaid California Exploration Company, Inc., Sea Cliff Development Company, Ltd., and Processco, Limited, are hereinafter collectively referred to as "Subsidiaries". At all times since

their incorporation Honolulu owned all the issued and outstanding capital stock of said Subsidiaries, and likewise at all times since the incorporation of the predecessors of California Exploration Company, Inc., Honolulu owned all the issued and outstanding capital stock of said predecessors. On August 31, 1936, the said Subsidiaries were liquidated, and distributed to their sole stockholder, Honolulu, all their assets, subject to their liabilities, in complete cancellation and redemption of all their issued and outstanding capital stock, and said Subsidiaries ceased to transact business and dissolved. Upon the liquidation of said Subsidiaries, Honolulu realized a loss of \$1,225,908.63, which was the amount charged off on its books as a loss, no portion of which was recognized for Federal income tax purposes under the provisions of section 112(b)(6) of the Revenue Act of 1936, and was so treated by Honolulu in its 1936 Federal income and excess-profits tax return. Said loss of \$1,225,908.63 was computed as follows: [26]

✓
AUG 31 1936

Cash invested by Honolulu in the capital stock of said Subsidiaries, including the predecessors of California Exploration Company, Inc.:

California Exploration Company	\$ 470,000.00	
Honolulu Oil Company	198,000.00	
<hr/>		
Total cost of stock of predecessors of California Exploration Company, Inc.	\$ 668,000.00	
<hr/>		
Additional investment in stock of California Exploration Company, Inc.	470,000.00	
<hr/>		
Total cost of stock of California Exploration Company, Inc.	\$ 1,138,000.00	
Sea Cliff Development Company, Ltd.	345,000.00	
Processco, Limited	100,000.00	\$ 1,583,000.00
<hr/>		
Cash advances by Honolulu to said Subsidiaries remaining unpaid at date of liquidation:		
California Exploration Company, Inc.	\$ 31.54	
Sea Cliff Development Company, Ltd.	3,082.77	
Processco, Limited	84,051.93	87,166.24
<hr/>		
Paid by Honolulu to third parties for their contingent interest in capital stock of Processco, Limited, under a contract under which said parties would become entitled to certain shares of stock if the net profits of said corporation should exceed 6 per cent of its average invested capital for twelve successive calendar months....		20,457.02
<hr/>		
Total investment and advances by Honolulu.....	\$ 1,690,623.26	

Less assets acquired from said Subsidiaries (minus liabilities assumed) per Exhibit "H" attached hereto and made a part hereof	464,714.63
<hr/>	
Loss charged off by Honolulu on its books upon liquidation of said Subsidiaries	\$ 1,225,908.63
<hr/> <hr/>	

The assets acquired by Honolulu upon the liquidation of [27] said subsidiaries were carried on the books of said Subsidiaries at the cost to said Subsidiaries (or in the case of assets originally acquired by the predecessors of California Exploration Company, Inc., at the cost to said predecessors). The accounts representing said assets on the books of said Subsidiaries, together with reserves for depreciation and depletion computed on said cost, a reserve for bad debts, and the accounts representing the liabilities assumed by Honolulu, were transferred without change to the books of Honolulu. The total of said assets, less said liabilities and reserves, transferred to the books of Honolulu amounted to the sum of \$464,714.63, as above set forth. The aggregate value of said assets, less said liabilities and reserves, did not exceed said sum of \$464,714.63, and for the purposes of this stipulation it is agreed that their aggregate value, less said liabilities and reserves, is the sum of \$464,714.63. For the purpose of determining earnings or profits available for dividends after August 31, 1936, Honolulu used the cost of said assets, as above set forth, in the determination of depreciation, depletion, and gain or loss on the sale or other disposition thereof.

15. The surplus of Honolulu as of March 1, 1913, is allocated as follows:

Earned surplus	\$ 426,918.44
Paid-in surplus	\$ 2,501,673.44
Surplus by appreciation	\$15,226,408.55

16. During the years 1913 to 1935, inclusive, Honolulu paid the following dividends from March 1, 1913 surplus and appreciation existing on March 1, 1913:

Year	Amount
1914	\$ 93,191.16
1915	235,876.98
1916	105,583.93
1917	360,000.00
1918	7,155.11

Total.....\$801,807.18 [28]

17. The predecessors of California Exploration Company, Inc., sustained operating losses during the period from their incorporation to their consolidation, as follows:

California Exploration Company	\$427,909.64
Honolulu Oil Company	325,322.64

Total operating deficit carried onto the books of the consolidated company, California Exploration Company, Inc.\$753,232.28

Each of said Subsidiaries sustained operating losses during the period from their incorporation to their dissolution, and the resulting operating deficits of said Subsidiaries as of the date of their liquidation on August 31, 1936, were as follows:

California Exploration Company, Inc.:

Acquired from predecessors as above set forth.....	\$753,232.28
Resulting from operating losses subsequent to con- solidation	194,795.44
Sea Cliff Development Company, Ltd.....	156,278.11
Processco, Limited	101,145.78

Total operating deficits of Subsidiaries.....\$1,205,451.61

18. For the years 1928 to 1933, inclusive, Honolulu filed consolidated returns, and the operating losses of these Subsidiaries were applied for income tax purposes in reduction of the net income of Honolulu as follows (Honolulu acquired the stock of the Sea Cliff Development Company in December, 1933):

Year	California Exploration Company	Honolulu Oil Company	Processco Limited	Total Loss for Year
1928	\$152,741.96	\$	\$	\$152,741.96
1929	91,929.50	.....	.....	91,929.50
1930	98,324.77	93,909.60	2,097.24	194,331.61
1931	25,387.28	115,178.56	5,491.57	146,057.41
1932	15,850.83	74,330.13	18,909.71	109,090.67
1933	15,645.50	53,515.04	5,791.98	74,952.52
Total	\$399,879.84	\$336,933.33	\$ 32,290.50	\$769,103.67

[29]

The taxable net income of Honolulu after reduction of operating losses of the subsidiary companies is shown as follows:

Year	Amount
1928	\$ 1,364,334.08
1929	1,433,602.91
1930	1,553,754.99
1931	123,151.83
1932	547,582.01
1933 (loss)	(243,578.74)

As all of the aforesaid companies had operating losses for the year 1933, the operating losses of the three subsidiary companies availed of in the consolidated returns covering the years 1928 to 1932, inclusive, amounted to \$694,151.15 (\$769,103.67 less \$74,952.52).

✓
✓
19. At all times during the calendar year 1936 Honolulu had outstanding 937,743 shares of capital stock, on which it paid four cash distributions of twenty-five cents per share each on March 14, June 15, September 15, and December 15. On January 1, 1936, Honolulu had available for dividends earnings or profits accumulated since February 28, 1913, in the amount of \$139,631.26. Honolulu's earnings or profits during the calendar year 1936 amounted to the sum of \$931,553.82 before deducting any portion of said loss realized upon the liquidation of said Subsidiaries on August 31, 1936, in the amount of \$1,225,908.63, or before deducting the aggregate operating deficits of said subsidiaries in the amount of \$1,205,451.61.

Dated: Feb. 4th, 1943.

MORRISON, HOHFELD,
FOERSTER, SHUMAN &
CLARK,

LEON de FREMERY,

Attorneys for Plaintiff.

FRANK J. HENNESSY,

Attorney for Defendant. [30]

EXHIBIT A

Return Form Marked "Duplicate" Must Be Filed With This Original Return

Form 1040
Do Not Write in
These Spaces

INDIVIDUAL INCOME TAX RETURN

For Net Incomes From Salaries or Wages of More
Than \$5,000 and Incomes From Business, Pro-
fession, Rents, or Sale of Property.

Treasury Department
Internal Revenue
Service

File
Code

FOR CALENDAR YEAR 1936

(Auditor's Stamp)

or fiscal year begun.....,1936, and ended, 1937

Serial
Number

File This Return Not Later Than the 15th Day of the
Third Month Following the Close of the Taxable
Year.

District

Print Name and Address Plainly Below
(See Instruction 28)

(Cashier's Stamp)

LORIN A. CRANSON

(Name) (Both husband and wife, if this is a joint return)

215 Market Street

(Street and number, or rural route)

San Francisco San Francisco California
(Post office) (County) (State)

Cash Check M.O.
Cert. of Ind.

First Payment

\$.....

Exhibit A—(Continued)

1. State whether you are (a) a citizen of the United States, or (b) a resident alien—Citizen.
2. If you filed a return for the preceding year, to which Collector's office was it sent?—S. F.
3. Were you married and living with husband or wife during your taxable year?—No.
4. Is this a joint return of husband and wife (see Instruction 21)?—No.
5. State name of husband or wife if a separate return was made and the Collector's office to which it was sent—XX
6. If not married, were you the head of a family (see Instruction 22 for definition) during your taxable year?—No.
7. How many dependent persons (other than husband or wife) under 18 years of age or incapable of self-support received their chief support from you during your taxable year?—One.
8. If your status in respect to question 3, 6, or 7 changed during the year, state date and nature of change—None.
9. State whether your books are kept on cash or accrual basis.....
10. State principal occupation or profession accounting for salaries, wages, commissions, fees, etc., in Item 1—Corporation Executive.
11. Did you transfer to or receive from any one person money or property in excess of \$5,000, during the calendar year 1936, without an adequate and full consideration in money or money's worth?—No.
(Answer "yes" or "no")
- If, so, did you file a gift tax return on Form 709 or an information return on Form 710?
—No.
(Answer "yes" or "no")
12. Did any person or persons advise you in respect of any question or matter affecting any item or schedule of this return, or assist or ad-

Exhibit A—(Continued)

return was actually prepared by any person or persons other than yourself, state the source of the information reported in this return and the manner in which it was furnished to or obtained by such person or persons.....

13. Did you make a return of information on Forms 1096 and 1099 (see Instruction 31) for the calendar year 1936? (Answer "yes" or "no")—No.

12. (Continued)
 vise you in the preparation of this return, or actually prepare this return for you?—No.
 (Answer "yes" or "no")

If so, give the name and address of such person or persons and state the nature and extent of the assistance or advice received by you and the items or schedules in respect of which the assistance or advice was received; if this

Item and Instruction No.	INCOME	Amount received	Expenses paid (Explain in Schedule F)
1. Salaries, Wages, Commissions, Fees, et. (State names and address of employer)			
	Honolulu Oil Corporation, Ltd.....	\$.....	\$14,160.00
	215 Market Street, San Francisco.....	.....	.....
2. Net Profit (or Loss) from Business or Profession. (From Schedule A).... (State kind of business)			
3. Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest on tax-free covenant bonds). (Attach detailed statement).....			421.50
4. Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source. (Attach detailed statement) .....			.....
5. Taxable Interest on Government obligations, etc. (From Schedule D, Line (g)) .....			.....
6. Dividends. (From Schedule E)			1,700.00

Attach Remittance Here

Exhibit A—(Continued)

INCOME—(Continued)		
Item and Instruction No.		
7.	Income (or Loss) from Partnerships, Syndicates, Pools, etc. (Furnish name, address, and kind of business).....	
8.	Income from Fiduciaries. (Furnish name and address).....	
9.	Rents and Royalties. (From Schedule B).....	
10.	Capital Gain (or Loss). (From Schedule C) (If capital loss, this amount may not exceed \$2,000)	
11.	Other Income. (State nature.) (Use separate schedule, if necessary).....	
12.	Total Income in Items 1 to 11.....	\$16,281.50
DEDUCTIONS		
13.	Interest paid. (Explain in Schedule F).....	\$ 68.59
14.	Taxes Paid. (Explain in Schedule F).....	261.41
15.	Losses by Fire, Storm, etc. (Explain in table at foot of page 2).....	
16.	Bad Debts (including bonds determined to be worthless during taxable year). (Explain in Schedule F).....	
17.	Contributions. (Explain in Schedule F).....	68.00
18.	Other Deductions Authorized by Law (including stock determined to be worthless during taxable year). (Explain in Schedule F).....	1,200.00
19.	Total Deductions in Items 13 to 18.....	1,598.00
20.	Net Income (Item 12 minus Item 19).....	\$14,683.50

Exhibit A—(Continued)

COMPUTATION OF TAX (See Instruction 23)

Item and Instruction No.			
21. Net income (Item 20 above)	\$14,683.50		\$ 474.70
22. Less: Personal exemption	\$1,000.00		
23. Credit for Dependents. (Explain in Schedule F)	400.00	1,400.00	542.68
24. Balance (Surtax net income)	\$13,283.50		
25. Less: Interest on Government obligations, etc. (Item 5)	\$.....		
26. Earned income credit. (See Instruction 22)	1,416.00		
27. Balance subject to normal tax	\$11,867.50		
28. Normal tax (4% of Item 27)			\$ 474.70
29. Surtax on Item 24. (See Instruction 23)			542.68
30. Total tax. (Item 28 plus Item 29)			\$ 1,017.38
31. Less: Income tax paid at source (2% of item 4)			\$.....
32. Income tax paid to a foreign country or U. S. possession			
33. Balance of Tax. (Item 30 minus Items 31 and 32)			\$ 1,017.38

Exhibit A—(Continued)

AFFIDAVIT (See Instruction 27)

I/we swear (or affirm) that this return (including its accompanying schedules and statements, if any) has been examined by me/us, and to the best of my/our knowledge and belief is a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Revenue Act of 1936 and the Regulations issued thereunder.

Subscribed and sworn to by.....
before me this.....day of....., 193.....
..... (Signature) (See Instruction 27)

.....
..... (Signature)

[Notarial Seal]

A Return Made by an Agent Must Be Accompanied
by Power of Attorney (See Instr. 27)

Exhibit A—(Continued)

AFFIDAVIT (See Instruction 27)

I/we swear (or affirm) that I/we prepared this return for the person or persons named herein and that the return (including its accompanying schedules and statements, if any) is a true, correct, and complete statement of all the information respecting the income tax liability of the person or persons for whom this return has been prepared of which I/we have any knowledge.

Subscribed and sworn to be fore me this..... (Signature of person preparing the return)
day of....., 193....

..... (Signature of officer administering oath) (Title)
..... (Signature of person preparing the return)

[Notarial Seal] (Name of firm or employer, if any)

[31]

SCHEDULE A—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION (See Instruction 2)

[Printer's Note]: Followed by printed form not filled in.

SCHEDULE B—INCOME FROM RENTS AND ROYALTIES (See Instruction 9)

[Printer's Note]: Followed by printed form not filled in.

Exhibit A—(Continued)

SCHEDULE C—CAPITAL GAINS AND LOSSES (From Sales or Exchanges Only)
(See Instruction 10)

[Printer's Note]: Followed by printed form not filled in.

SCHEDULE D—INTEREST ON GOVERNMENT OBLIGATIONS, ETC. (See Instruction 5)

[Printer's Note]: Followed by printed form not filled in.

SCHEDULE E—INCOME FROM DIVIDENDS

Itemize all dividends received during the year, stating amounts and names and addresses of corporations declaring the dividends:

Honolulu Oil Corporation, Ltd., 215 Market St., San Francisco, California	450.00
Western States Gasoline Corporation, 609 So. Grand Ave., Los Angeles, California.....	1,250.00

Exhibit A—(Continued)

SCHEDULE F—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 1, 13, 14, 16, 17, AND 18,
AND CREDIT CLAIMED IN ITEM 23

Interest, Sprig Farm Assn.	37.65)	Dues Tax, Sp. Farm Assn.	29.50
Interest, American Trust Co.	30.94)	Lake County Taxes	7.09
Club dues, Olympic Club (Tax).....	8.84	Tiny Buck Club	12.00
Deposit box rent .....	.60	Community Chest	50.00
State Income Tax	211.01	Childrens' Theatre	5.00
S. F. City & County	4.37	T. B. Stamps	1.00

[Slip of paper pasted on form]

Support of niece under 18 years of age, Barbara McHugh 400.00
Worthless stock, 120 shares of Oilfields Electrical Engineering Corporation, Ltd. 1,200.00

EXPLANATION FOR DEDUCTION FOR LOSSES BY FIRE, STORM, ETC., CLAIMED IN
SCHEDULE A AND IN ITEM 15

[Printer's Note]: Followed by printed form not filled in.

EXHIBIT B

Treasury Department
Internal Revenue Service
433 Federal Office Building
San Francisco, Calif.

Office of
Internal Revenue Agent in Charge
San Francisco Division

Lorin A. Cranson,
215 Market Street,
San Francisco, California.

In re: Income Tax

Date of Report: Mar 24 1938

Year Examined: 1936

Enclosed herewith you will find copy of report covering examination recently made by a representative of this office, concerning your income tax liability, which is furnished for your information and files.

Kindly acknowledge receipt of the enclosed report to the undersigned by return mail.

Respectfully,

F. M. HARLESS,

Internal Revenue Agent in
Charge.

Enclosures:

Form 892-SF

hgk [32]

Preliminary Statement
Year 1936

Taxpayer:

Examining Officer:

Lorin A. Cranson

Bernard Cytron

Table of Contents

Schedule No. 1 Block Adjustments

1A Explanation of Items

2 Computation of Tax

Principal causes of additional tax: Disallowance of loss on worthless stock. All changes were discussed with Lorin A. Cranson who agrees to the adjustments. Status and reason for exemption: Single—Chief support of niece under 18 years of age.

SCHEDULE No. 1—Year 1936

Block Adjustments

	Return	Additions to Income	Corrected
1. Salary	\$14,160.00		\$14,160.00
3. Interest	421.50		421.50
6. Dividends	1,700.00		1,700.00
12. Total Income	\$16,281.50		\$16,281.50
13. Interest	68.59		68.59
14. Taxes	261.41		261.41
17. Contributions	68.00		68.00
18. Other deductions	1,200.00	\$ 1,200.00	
19. Total deductions	\$ 1,598.00		\$ 398.00
20. Net Income	\$14,683.50	\$ 1,200.00	\$15,883.50

SCHEDULE No. 1-A—Year 1936

Explanation of Items

Line 18.	Other deductions claimed	\$ 1,200.00
	Other deductions allowed	—0—
		<hr/>
	Increase in income	\$ 1,200.00

Increase is due to disallowance of loss on worthless stock. The charter of the Oilfields Electrical Engineering Corporation, a California corporation, was forfeited in 1932 when the corporation failed to pay its franchise tax, and the stock became worthless prior to 1936.

SCHEDULE No. 2—Year 1936

Computation of Tax

1.	Net income (from Schedule 1).....		\$15,883.50
2.	Less: Personal exemption	\$1,000.00	
3.	Credit for dependents.....	400.00	1,400.00
		<hr/>	<hr/>
4.	Balance (surtax net income		\$14,483.50
6.	Less: Earned income credit		1,400.00
		<hr/>	<hr/>
7.	Balance subject to normal tax.....		\$13,083.50
		<hr/>	<hr/>
8.	Normal tax at 4 percent.....	523.34	
9.	Surtax	643.52	
		<hr/>	<hr/>
13.	Total tax assessable		\$ 1,166.86
14.	Tax previously assessed		\$ 1,017.38
		<hr/>	<hr/>
15.	Additional tax to be assessed.....		\$ 149.48

EXHIBIT C

Treasury Department
 Office of
 Commissioner of Internal Revenue
 Washington

Income Tax Unit
 IT:C1:CC

Certificate of
 Overassessment
 Number: 2534937
 Allowed: \$132.53
 Schedule No. 70750

Mr. Lorin A. Cranson,
 c/o C. Wm. Wittman, Jr.,
 215 Market Street,
 San Francisco, California.

Sir:

An audit of your income tax return, form 1040, and a consideration of all the claims (if any) filed by you for the taxable year ended December 31, 1936 indicates that the tax assessed for that year was in excess of the amount due:

Tax Assessed:	Income Tax	Interest
Original, account #201858	\$1,017.38	None
Additional, March 1938 list, #510348....	149.48	\$9.21
	<hr/>	<hr/>
Total assessed	\$1,166.86	\$9.21
Correct liability	1,042.02	1.52
	<hr/>	<hr/>
Overassessment	\$ 124.84	\$7.69

This overassessment is in accordance with adjustments to your tax liability to which you have agreed.

The amount of the overassessment will be abated, credited, or refunded as indicated below. (You will be relieved from the payment of any amount abated; if an overpayment has been made and other taxes are due, credit will be made accordingly, and any amount refundable is covered by a Treasury check transmitted herewith.)

Included in the accompanying check is interest in the amount stated below, allowed on the refund or credit.

By direction of the Deputy Commissioner:

Respectfully,

T. C. ATKESON

Head of Division.

Abated: \$
 Credited: \$132.53
 To Tax. Year 1937
 1940-Mar-1-519007
 Credited: \$
 To Tax. Year
 Refunded: \$
 Interest: \$12.51

[Typed in Margin]: Note:—The interest, if any, included herein is taxable income, and must be included in your income tax return for the year in which received. [34]

EXHIBIT D

[Printer's Note: Exhibit "D" is not reproduced here as it is identical with Exhibit "B", the Amended Claim attached to the complaint, and set out in full at page 16 of this printed record.] [35-36]

EXHIBIT E

Treasury Department
Internal Revenue Service
74 New Montgomery Street
San Francisco, California

Office of

Internal Revenue Agent in Charge
San Francisco Division

May 14, 1941

Mr. Lorin A. Cranson,
215 Market Street,
San Francisco, California.

Sir:

I enclose a copy of the report of the examination of your income tax returns for the year ending December 31, 1936, in connection with your claim for a refund of \$176.68. The report, which has been carefully reviewed by this office, discloses no ground for reduction of your tax liability.

If You Agree to the conclusions expressed in the report, please so advise this office at your earliest convenience.

If You Do Not Agree to these conclusions, you may file a protest, executed in triplicate under oath, with this office, within 30 days from the date of this letter, stating the grounds for your exceptions. Any protest so filed will have careful consideration and, if you so request, an opportunity for a hearing in this office will be granted you. This office will be pleased to answer any questions which may occur

to you in your examination of the enclosed copy of the report.

Should you fail to file with this office within the 30-day period mentioned either an acceptance of the conclusions expressed in the report or a written protest, a recommendation will be made to the Commissioner of Internal Revenue that your claim be disallowed.

Your prompt acknowledgment of the receipt of this letter and related papers upon the enclosed form will be much appreciated.

Respectfully,

F. M. HARLESS,

Internal Revenue Agent in
Charge.

Enclosures:

Report of examination.

Form of acknowledgment. [37]

Examining Officer:

L. D. Flint

Office Audit

San Francisco, California

May 1, 1941

Name and Address on return:

Lorin A. Cranson

215 Market Street

San Francisco, California

Returned filed: March 13, 1937

Year: 1936

District filed: First California

Claim disallowed

Net income disclosed by RAR dated 9-21-39..... 14,883.50

No change in income.

An amended claim was filed on the basis that dividends from Honolulu Oil Corp. were partially non-taxable and that a loss of \$1,000.00 was sustained on stock of the Santa Clara Holding Co.

Information on file shows that dividends from Honolulu Oil received in 1936 are 100% taxable.

In report dated 9-21-39, Revenue Agent Oram allowed the loss of \$1,000.00 on the stock. It is recommended that the amended claim be disallowed.

Net income as adjusted		14,883.50	
Less: Personal exemption	1,000.00		
Credit for dependents	400.00	1,400.00	
		<hr/>	
Balance, surtax net income.....		13,483.50	
Less: Earned income credit (10% of			
\$14,000.00)		1,400.00	
		<hr/>	
Balance, subject to normal tax.....		12,083.50	
Normal tax at 4% on \$12,083.50.....	483.34		
Surtax on \$13,483.50	558.68		
Total tax		1,042.02	
Tax liability as adjusted		1,042.02	
Tax previously assessed.....	1,017.38		
Subsequent: List 1938-March			
510348	149.48	1,166.86	
		<hr/>	
Overassessment allowed 2-26-40	124.84	1,042.02	
Overassessment		None	

L. D. FLINT

Internal Revenue Auditor [38]

Lorin A. Cranson vs.

Treasury Department
Washington
Office of
Commissioner of Internal Revenue

Address Reply To
Commissioner of Internal Revenue
And Refer To

IT:C1:CC:4-CCP

Jul 22 1941

Mr. L. A. Cranson,
215 Market Street,
San Francisco, California.

In re: Claim for refund of \$176.68
For the year 1936

Sir:

Reference is made to the revenue agent's report upon an investigation of your tax liability dated May 1, 1941, a copy of which was forwarded you, wherein you were informed that the claim for refund indicated above will be disallowed.

In accordance with the provisions of existing internal revenue law, notice is hereby given of the disallowance of your claim in full.

Respectfully,

GUY T. HELVERING,

Commissioner,

By T. MOONEY

Deputy Commissioner. [39]

EXHIBIT F

[Printer's Note: Exhibit "F" is not set out here, as it is identical with Exhibit "C", the Second Amended Claim, attached to the Complaint, and printed in full at page 20 of this printed record.]

EXHIBIT G

Treasury Department
Office of

Commissioner of Internal Revenue

Address Reply To

Commissioner of Internal Revenue

And Refer To

IT:C1:CC:3-EVL

Feb 10 1942

Mr. L. A. Cranson,

215 Market Street,

San Francisco, California.

Sir:

Reference is made to Form 843 filed by you on May 17, 1941, with the Collector of Internal Revenue, San Francisco, California, requesting a refund of \$176.68, income tax, for the year 1936. The Form 843 is considered an application for reconsideration of your claim for refund, which was disallowed, registered notice of disallowance having been mailed on July 22, 1941, in accordance with the provisions of the Internal Revenue Laws.

The Bureau has considered the additional arguments presented in your Form 843, and in accordance with the findings of the Internal Revenue

Agent in Charge, San Francisco, California, the disallowance of the above-mentioned claim is sustained.

In view of the foregoing, your application for reconsideration is denied.

Respectfully,

TIMOTHY C. MOONEY,

Deputy Commissioner,

By T. C. ATKESON

Head of Division. [42]

EXHIBIT H

HONOLULU OIL CORPORATION

ASSETS ACQUIRED AND LIABILITIES ASSUMED UPON LIQUIDATION OF CERTAIN WHOLLY OWNED "SUBSIDIARIES" IN 1936

	California Exploration Company, Inc.	Sea Cliff Development Company, Ltd.	Processco, imited	Total
ASSETS AT COST				
Cash	\$ 2,015.70	\$	\$	\$ 2,015.70
Accounts Receivable—Less Reserve	50.96			50.96
Inventories:				
Crude Oil	1,780.86	1,573.04		3,353.90
Materials & Supplies	12,668.45			12,668.45
Oil Leases and Royalties—Less Reserve	112,262.94	38,278.32		150,541.26
Equipment—Less Reserve	62,926.38	151,818.49		214,744.87
Patents—Less Reserve			82,906.15	82,906.15
Incomplete Wells		245.50		245.50
	<hr/>	<hr/>	<hr/>	<hr/>
	\$191,705.29	\$191,915.35	\$ 82,906.15	\$466,526.79
LIABILITIES				
Accrued Liabilities	1,701.47	110.69		1,812.16
	<hr/>	<hr/>	<hr/>	<hr/>
Net Assets Acquired	\$190,003.82	\$191,804.66	\$ 82,906.15	\$464,714.63
	<hr/>	<hr/>	<hr/>	<hr/>

[Endorsed]: Filed Feb. 11, 1943. [43]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled cause having come regularly on for trial before the Court, sitting without a jury, the plaintiff appearing by his Attorneys, Leon de Fremery, Esq. and Messrs. Morrison, Hohfeld, Foerster, Shuman & Clark, the defendant appearing by Frank J. Hennessy, United States Attorney for the Northern District of California, represented by Esther B. Phillips, Assistant United States Attorney, and the facts having been stipulated and the cause having been argued and submitted, the Court now makes these

FINDINGS OF FACT

The Court refers to and incorporates herein as his findings the Stipulation of Facts made and filed by the parties. [44]

From the facts so stipulated and found, the Court renders the following

CONCLUSIONS OF LAW

(1) That the operating deficits of the wholly owned subsidiary corporations of Honolulu Oil Corporation as of the date of their liquidation did not diminish the earnings or profits of Honolulu Oil Corporation which were otherwise available for distribution to the stockholders of Honolulu Oil Corporation during the tax year.

(2) The loss sustained by Honolulu Oil Corporation upon the liquidation of its wholly owned subsidiary corporations did not diminish the earnings or profits of Honolulu Oil Corporation available for dividends during the tax year.

(3) The retroactive application of the Internal Revenue Code as amended by Section 501 of the Second Revenue Act of 1940 is not unconstitutional.

(4) The Commissioner of Internal Revenue correctly determined that the claim for tax refund should be rejected.

Let judgment be entered accordingly, without costs to either party.

MICHAEL J. ROCHE,

United States District Judge.

(Receipt of Service.)

[Endorsed]: Filed Oct. 23, 1943. [45]

In the District Court of the United States for the
Northern District of California, Southern Di-
vision

No. 22168-R

LORIN A. CRANSON,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

JUDGMENT

The above entitled cause having come regularly on for trial before the court, sitting without a jury, the plaintiff appearing by his attorneys, Leon de Fremery, Esq., and Messrs. Morrison, Hohfeld, Foerster, Shuman & Clark, the defendant appearing by Frank J. Hennessy, United States Attorney for the Northern District of California, represented by Esther B. Phillips, Assistant United States Attorney, and the facts having been stipulated and the cause having been argued and submitted, the Court having ordered judgment for defendant, It Is Hereby Ordered that judgment be entered for defendant without costs.

MICHAEL J. ROCHE,

United States District Judge.

[Endorsed]: Filed Oct. 25, 1943. [46]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Lorin A. Cranson, plaintiff above named, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the final judgment entered in this action on October 23, 1943.

Dated: November 18, 1943.

LEON de FREMERY
MORRISON, HOHFELD,
FOERSTER, SHUMAN
& CLARK

Attorneys for Appellant,
LORIN A. CRANSON
Address: Eleventh Floor,
Crocker Building
San Francisco, California

[Endorsed]: Filed Nov. 18, 1943 [47]

[Title of District Court and Cause.]

DESIGNATION OF RECORD

Appellant designates the following portions of the record, proceedings and evidence to be contained in the record on appeal in this action:

1. Complaint.
2. Defendant's Answer to Complaint.
3. Stipulation of Facts.

4. Findings of Fact and Conclusions of Law filed October 23, 1943. [48]
5. Judgment.
6. Notice of Appeal.
7. This Designation.

Dated: November 18, 1943.

LEON de FREMERY
MORRISON, HOHFELD,
FOERSTER, SHUMAN
& CLARK

Attorneys for Appellant,
LORIN A. CRANSON
Address: Eleventh Floor,
Crocker Building
San Francisco, California

Receipt of a copy of the within Designation of Record is hereby admitted this 18th day of November, 1943.

FRANK J. HENNESSY
Per T.S.
Attorney for Appellee

[Endorsed]: Filed Nov. 18, 1943. [49]

District Court of the United States
Northern District of California

CERTIFICATE OF CLERK TO
TRANSCRIPT OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of

California, do hereby certify that the foregoing 49 pages, numbered from 1 to 49, inclusive, contain a full, true, and correct transcript of the records and proceedings in the case of Lorin A. Cranson, Plaintiff, vs. United States of America, Defendant. No. 22168-S, as the same now remains on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of Six-dollars and thirty-five-cents (\$6.35) and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 22nd day of December A. D. 1943.

[Seal]

C. W. CALBREATH

Clerk

WM. J. CROSBY

Deputy Clerk

[Endorsed]: No. 10644. United States Circuit Court of Appeals for the Ninth Circuit. Lorin A. Cranson, Appellant vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California Southern Division.

Filed December 23, 1943.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
For the Ninth Circuit

No. 10644

LORIN A. CRANSON,

Appellant,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS
AND DESIGNATION OF RECORD

Statement of Points Relied Upon by Appellant

This is an action for the refund of income taxes paid with respect to certain distributions received from Honolulu Oil Corporation, which distributions appellant contends were in part at least distribu-

tions of capital and not subject to income tax. Appellant hereby states that the points upon which he intends to rely on this appeal are as follows:

(1) The court below erred in concluding that the operating deficits of the wholly owned subsidiary corporations of Honolulu Oil Corporation as of the date of their liquidation did not diminish the earnings or profits of Honolulu Oil Corporation which were otherwise available for distribution to the stockholders of Honolulu Oil Corporation during the tax year.

(2) In the event that the court below did not err as stated in paragraph (1) above, then the court below erred in concluding

(a) that the loss sustained by Honolulu Oil Corporation upon the liquidation of its wholly owned subsidiary corporations did not diminish the earnings or profits of Honolulu Oil Corporation available for dividends during the tax year; and

(b) that the retroactive application of the Internal Revenue Code as amended by Section 501 of the Second Revenue Act of 1940 is not unconstitutional.

(3) The court below erred in concluding that the Commissioner of Internal Revenue correctly determined that the claim for tax refund should be rejected.

(4) The court below erred in failing and refusing to render judgment for plaintiff.

Designation of Record to be Printed

Appellant hereby designates the entire record on appeal, excepting only the exhibits attached to the Stipulation of Facts, as necessary for the consideration of the foregoing points and as the portion of the record to be printed.

Dated: December 23, 1943.

LEON de FREMERY
MORRISON, HOHFELD,
FOERSTER, SHUMAN
& CLARK

Attorneys for Appellant
Eleventh Floor,
Crocker Building
San Francisco, California

Receipt of a copy of the within Statement of Points and Designation of Record is hereby admitted this 23rd day of December, 1943.

FRANK J. HENNESSY
United States Attorney
Per T.S.
Attorney for Appellee

[Endorsed]: Filed Dec. 23, 1943. Paul P. O'Brien, Clerk.